



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

EPA and Louisiana Department of Environmental Quality (LDEQ) staff have continued to work together to discuss areas where LDEQ may need additional flexibility to address the challenges caused by Hurricanes Katrina and Rita. In a meeting between our respective staffs on February 16 and 17, 2006, LDEQ was clear that the issues of the number of houses requiring demolition, the sheer volume of debris, limited landfill space that can currently accept asbestos contaminated material, and the need to move expeditiously to proceed with demolition activities are still critical factors that need to be addressed. As a result, LDEQ requested at that meeting additional flexibility to facilitate demolition activities. In light of the circumstances outlined by LDEQ, today EPA is exercising its enforcement discretion and granting a No Action Assurance.

As you know, on February 3, 2006, EPA issued a No Action Assurance for the asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, to allow residences that are subject to a government issued demolition order based on the residence being 1) structurally unsound but not necessarily in danger of imminent collapse, or 2) moved off of its foundation, to be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. Under section 61.145(a)(3) of the asbestos NESHAP regulation, buildings subject to a government issued demolition order based on a determination that the building is structurally unsound and in danger of imminent collapse are not subject to otherwise applicable requirements for inspection and removal of asbestos prior to demolition. Such structures must nonetheless be demolished, transported and disposed of in accordance with specified requirements that ensure adequate protection from any asbestos the buildings may contain. These requirements include notification, thorough wetting of the building both prior to and during the demolition process, and proper disposal of all the debris as if it contained asbestos. The effect of the February 3 No Action Assurance is to allow residences subject to government issued demolition orders based on the structures being unsound or moved off their foundations to be demolished and disposed of in accordance with the streamlined requirements of section 61.145(a)(3).

Today, EPA is extending the February 3, 2006 No Action Assurance to residences that are subject to government issued demolition orders because they are uninhabitable for other environmental reasons (e.g., from excessive flood damage rendering the home uninhabitable). Under this No Action Assurance, as under the February 3 action, such residences may be treated as though they are subject to government issued demolition orders based on a determination that they are structurally unsound and in danger of imminent collapse and thus subject to section 61.145(a)(3) of the asbestos NESHAP regulation. In other words, LDEQ, the U.S. Army Corps of Engineers, local governments, or persons acting under direction of any of these governmental entities, may apply to such residences the NESHAP requirements governing buildings that are "structurally unsound and in danger of imminent collapse." As noted above, for such buildings the asbestos NESHAP dispenses with prior inspection and removal of asbestos but requires notification and proper handling, transport and disposal. EPA is taking this action because it recognizes the necessity of addressing a number of residences not covered by the earlier No Action Assurance, but in need of expeditious demolition and removal.

Today's No Action Assurance will be in effect until February 3, 2007, and apply only to demolition of those residences in Louisiana that were damaged by Hurricane Katrina or Rita and which are subject to a government issued demolition order. In addition, this No Action Assurance applies only to residences that have four or fewer units being demolished in areas where public access is restricted. The No Action Assurance applies to LDEQ and persons operating at LDEQ's direction, the U.S. Army Corps of Engineers and persons operating at the Corps' direction, and local governments and persons acting under their direction. Today's action does not apply to structures that are being demolished solely because the cost of repair exceeds the cost of replacement. This No Action Assurance does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed herein). EPA reserves the right to revoke or modify this No Action Assurance if the Agency believes that such action is necessary to protect public health or the environment.

The February 3, 2006 No Action Assurance did not apply to local governments or persons operating at their direction. Today, EPA is amending that No Action Assurance to include local governments and persons operating at their direction because the Agency understands the local governments have been handling a significant portion of the demolition activities directly and they require the same flexibility to proceed expeditiously.

In accordance with section 61.145(a)(3), debris resulting from the demolition of any residence deemed and treated as "structurally unsound and in danger of imminent collapse" under either the February 3, 2006 No Action Assurance or today's No Action Assurance must be handled and disposed of as if it potentially contained asbestos. We understand that LDEQ intends to enhance a number of its existing construction and demolition (C&D) landfills with additional controls to meet or exceed the federal standards under the NESHAP for disposal of these types of waste material that potentially contain asbestos. Because certain types of asbestos (but not all types of asbestos) were banned after 1980, LDEQ intends to send debris from "unsound"

residences built after 1980 to these enhanced landfills. However, since the enhanced C&D landfills, as well as Louisiana's permitted Type I and Type II landfills are required by Louisiana to either meet or exceed federal disposal standards under the NESHAP, EPA will defer to the State to set disposal location priorities.

EPA is committed to continue to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. For example, our staffs are revisiting the use of Air Curtain Destructors and grinders as means of debris volume reduction to further assist in addressing the lack of adequate landfill space. I am hopeful these activities will be able to move forward, perhaps providing relief in both the immediate situation and future times of need. If you have any questions, please give me a call at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

cc: Richard Greene, Regional Administrator, Region 6  
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